IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 8, 2008 Session

CARIE C. BROOKS v. DOUGLAS J. BROOKS

Appeal from the Circuit Court for Robertson County
No. 7043 Ross H. Hicks, Judge

No. M2007-00351-COA-R3-CV - Filed April 6, 2009

A father of two who fell chronically behind on his child support asked the trial court to reduce the amount of the obligation because of a reduction in his income. The court found that the father did not prove a significant reduction in income, but it reduced his obligation anyway because the older child had reached his majority, and the father was therefore no longer responsible for his support. However, the trial court did not make the reduction retroactive to the child's eighteenth birthday, but instead to a later date corresponding to the father's eventual compliance with another of its orders. The court also found the father found guilty of thirty counts of criminal contempt for disobeying its orders, including seven counts for failing to pay installments of child support in full after his child's emancipation. The father argues on appeal that since the trial court has no authority to order child support beyond a child's minority, it should not have held him in contempt for failing to pay such support. Although a party is obligated to obey the orders of the court even when those orders are later determined to be invalid, we agree with the father that under the unusual circumstances of this case, those counts of contempt should be vacated. We reverse the trial court's order as to the date the reduction in the father's child support obligation became effective, and we vacate the findings of contempt against him for failing to make payments in accordance with that order. We also remand this case to the trial court for calculation of the amounts actually paid by the father from October of 2005 through the hearing on the final order and the calculation of any arrearage or overpayment. We also affirm twenty-two of the twenty-three remaining findings of separate counts of contempt against the father.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed in Part, Affirmed in Part, and Remanded

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Karla C. Hewitt, Christine Brasher, for the appellant, Douglas J. Brooks.

David Scott Parsley, Michael K. Parsley, for the appellee, Carie C. Brooks.

OPINION

I. DIVORCE AND CHILD SUPPORT

Douglas J. Brooks ("Father") and Carie C. Brooks ("Mother") were granted a divorce in 1995 on the ground of irreconcilable differences. *See* Tenn. Code Ann. § 36-4-101. The final decree incorporated a marital dissolution agreement ("MDA"), under which Mother was awarded custody of the parties' two children, ages eight and five at the time, with Father to pay child support of $3,000 per month.[1] The MDA also included rehabilitative alimony of $3,000 per month to be paid by Father for five years "or until his death or wife's death or remarriage, whichever is the first event to occur." Father also agreed to maintain health insurance for the children and to maintain insurance on his own life in the amount of $300,000 to guarantee payment of his obligations.

Father remarried in 1997. On September 25, 1997, the trial court reduced Father's child support obligation to $2,500 per month. It also reduced his alimony obligation to $1,500 per month, but declared that Father would remain responsible for the originally agreed upon amount of alimony ($180,000), so his payment obligation was extended beyond its original five year term "for so long as is necessary." The court's order also stated that if Father's income increased, Mother could petition the court for an increase in child support, and it required Father to provide Mother with sworn statements of his gross and net incomes annually, starting in 1998.[2]

This appeal arose from proceedings which occurred after Mother filed a petition on February 14, 2003 in the Circuit Court of Robertson County, asking the court to modify alimony and child support and to hold Father in contempt. Mother claimed that Father had willfully failed to pay the full amount of his alimony and child support obligations even though his income had increased, and she asked the court to modify his obligations to reflect his increased income. Father filed an answer and counter-petition in which he admitted that he had failed to pay the full amount of his court-ordered obligations, but denied that the failure was willful. He alleged that his income had actually decreased, and he asked the court to terminate his alimony obligation and to reduce his child support obligation.

The hearing on Mother's petition was not conducted until September 28, 2005. By that time, Chance Brooks, the parties' oldest child, was no longer a minor, having reached his eighteenth birthday on July 2, 2005. The parties' daughter, Kayla Brooks, was still a minor. Father chose to represent himself at the hearing, and he did not raise the issues set out in his counter-petition, nor

---

[1]The MDA recited that the amount of child support complied with the support guidelines adopted by the State of Tennessee, and the trial court's Final Decree stated that the MDA "does make equitable and sufficient provision for the minor children of the parties..."

[2]Both parties have cited the court's order of September 25, 1997. They have freely quoted from it in their briefs, and Mother has included excerpts from the order in her pleadings. However, the record does not contain a copy of the actual order. We can nonetheless safely infer that the trial court modified Father's obligations because he was able to prove a reduction in his income.

did he ask for a reduction in child support due to Chance's emancipation. In an order dated October 6, 2005, the trial court found that Father had accumulated arrearages of $40,500 for unpaid alimony and $55,700 for unpaid child support, and the court reduced those sums to judgment.

The court further declared that Father had violated its orders over thirty-six times since January of 2001, with most of those violations being failures to pay a court-ordered installment of child support or alimony in full. The court noted that each such act can be punished by only ten days in jail, and that the court's jurisdiction was limited to an aggregate sentence of 180 days. *See* Tenn. Code Ann. § 36-5-104(a). The court accordingly found Father guilty of eighteen acts of willful criminal contempt and imposed the maximum sentence.

Father began serving his sentence, but he quickly moved the court for a stay, contending that further incarceration would make it difficult for him to meet his financial obligations. Father, a country music entertainer claimed that he had three engagements scheduled for the upcoming week and that he anticipated he would net $2,625 from those engagements if he was released, which he would immediately place into Mother's hands upon receipt of the proceeds.

After Father was released,[3] he moved the court to rule on his counter-petition as well as on motions he filed under Tenn. R. Civ. P. 54.02 to declare the court's judgment final for purposes of appeal and under Tenn. R. Civ. P. 59.04 to alter or amend the judgment. His motion did not mention his older child's emancipation, but in a memorandum of law he filed one day before the motion hearing, he stated that since one of his children had reached majority, "Mr. Brooks should be permitted to seek modification of child support back to July 2, 2005 as well as modification based upon current income and the current child support guidelines." For her part, Mother moved the court to terminate Father's jail "furlough."[4]

The hearing on Father's motions was conducted on November 23, 2005. The court denied Father's motions, but granted his request to be allowed to pursue his counter-petition for reduction of child support. In its order of December 29, 2005, the Court declared that it "..will allow any modification of Mr. Brooks' child support obligation to begin on the date that the Court entered its Order from the September 28, 2005 [hearing] on October 6, 2005. The Court will not go behind its Order of October 6, 2005 to modify the judgments."

The court also found that Father had paid Mother $5,950 via cashier's check since the hearing of September 28, and it continued his jail furlough pending further proceedings. The court cautioned Father to continue to make his child support and other payments pursuant to the court's previous order in a timely manner, and to "account for his income to counsel for mother on a monthly basis during the interim." Father had apparently allowed his children's health insurance to lapse, so the

---

[3]Father testified that he spent three days in jail before being released.

[4]Although Father initially asked for a stay of his contempt sentence, subsequent orders in the record follow Mother's lead by referring to Father's freedom from incarceration as a furlough.

court also ordered him to "immediately reinstate the parties' minor child on health insurance." The subsequent proof showed that Father did not reinstate the health insurance until October of 2006, and that his child support payments remained somewhat sporadic.

II. The Final Hearing

The final hearing in this case was conducted on February 7, 2007. Both the parties testified, as did Father's booking agent and his current wife, Beth Brooks. Father disclaimed almost all knowledge of his own financial affairs, testifying that such matters were handled by Beth Brooks and by his accountant. He also testified that his career has been in decline since his last successful recording in 1995, and that he is no longer paid as much as previously for live performances.

Father denied that he willfully failed to pay child support, testifying that he couldn't pay his obligation in full because he just didn't have the money after payment of his other expenses. He submitted an exhibit of child support payments he claimed to have made in 2006[5]. It showed a payment of $2,500 in January, and payments of only $800 or $1,000 per month for each subsequent month. Father also testified that he had gone through a bankruptcy proceeding, that he spent October and November of 2006 in a rehabilitation facility for substance abuse problems, and that he had no income in those months.

Father also testified that he has suffered some serious health issues including a heart bypass, stroke, diabetes and thyroid disease, and that he was taking nine different medications for his conditions. His life insurance lapsed at some point because of insufficient funds in his bank account to cover the premium, and he testified that because of his health problems no insurance company was willing to underwrite a new policy for him.

Father's booking agent, Bobby Roberts, testified that he has worked with the entertainer since 2003. Mr. Roberts confirmed Father's testimony that his career has been on a downwards path. Statements prepared by Mr. Roberts showed that Father received business income from Mr. Roberts' booking agency of more than $220,000 in 2005, and in excess of $180,000 in 2006. From these sums, Father paid for equipment, travel expenses, promotional items, and the salaries of band members. Father's income tax returns showed adjusted gross income of $91,497 in 2003, $92,839 in 2004, and $87,000 in 2005. Father apparently did not pay his taxes however, for he testified that he owed about $150,000 to the IRS.

Additional financial information came from the testimony of Beth Brooks, who had been married to Father for ten years, but was now in the process of divorce. She testified that she and Father have an eight year old daughter and that the couple agreed to have Beth handle the money and

[5]The court allowed the statement to be entered into evidence, but declared that "I'm not accepting it as establishing what he has paid them." Questioned as to whether he had personal knowledge of those payments, Father said, "I have the knowledge of four of them, and my wife paid the rest of them, I guess." When Mother took the stand, she acknowledged that Father had paid $2,500 in January of 2006, but follow-up questioning about subsequent payments was inconclusive.

keeps the books for both of them. She testified that Father worked throughout their marriage, but confirmed that there had been a steady reduction in demand for his services. As a result, their living standard declined. She testified that at the end of 2005 they lost their home, their vehicles, Father's shop and his equipment, because of repossession. They had previously lived in a 5,000 square foot house on eleven acres of land, but had moved into a 2,100 square foot house with two acres of land on a rent-to-own contract. She further testified that they were currently behind on their rental payments.

When Mother took the stand, she testified that she had been packing orders at the Oshkosh factory in Robertson County for five and a half years, but that she needed child support to make ends meet. Her current wage was $12.88 per hour, but the number of hours she was able to work each week depended on the volume of business, and averaged about 20 hours a week. She was laid off at the time of the hearing. Her response to questions about the contempt proceedings against Father strongly suggested that she had no desire to see him go to jail, but "I would just like to get my money."

At the conclusion of proof, the trial court announced its decision from the bench, which was documented in an order filed on March 7, 2007. The court criticized Father for his cavalier attitude towards its orders and for placing his child support obligations last on his list of responsibilities, noting that everybody was getting paid except for Mother and the IRS. The court further found that Father was capable of meeting his child support obligation, and that he had not demonstrated a significant variance in his income such as would justify a reduction in that obligation. *See* Tenn. Comp. R. & Regs 1240-2-4-.05(2).

However, because of the emancipation of his oldest child, the trial court recalculated Father's child support obligation in accordance with the income shares guidelines, and reduced it to $920 per month.[6] The court announced that the reduction would be retroactive to October of 2006, despite its earlier declaration that any modification of the obligation would begin on October 6, 2005. The court declared that it was choosing October of 2006 because that was the month in which Father finally restored his child's health insurance and entered a rehabilitation program.

The court also reduced to judgment Father's arrearage for failing to make child support payments in the correct amount in the seven months from February to August of 2006,[7] and it increased the judgment on his earlier arrearage by adding statutorily-required interest.[8] The court

---

[6]The trial court's calculation took into account Father's income as an entertainer, Mother's factory income, and Father's support obligation towards his child from his subsequent marriage.

[7]The arrearage amount set out in the trial court's order, $17,500, indicates that the trial court failed to take into account Father's partial payments of his child support obligations during the time in question.

[8]Tenn. Code Ann. § 36-5-101(f)(1) reads in relevant part, "[i]f the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest from the date of the arrearage, at the rate of twelve percent (12%) per year."

further found Father guilty of seven different counts of willful criminal contempt for the inadequate child support payments and sentenced him to 70 days in the Robertson County Jail for those offenses. Father was also found guilty of thirteen counts of criminal contempt "for failing to account for his income on a monthly basis" and of additional counts for failing to maintain health insurance for the children and failing to pay a dental bill as ordered.

Father's furlough was terminated, and his new sentence, totaling 180 days, was ordered to be served concurrently with his previous sentence. The court ordered that Father be taken into custody immediately to begin serving his sentence. He was apparently released on bail a few days later, and shortly thereafter he filed this appeal.

III. CHILD SUPPORT AND EMANCIPATION

Father does not challenge the trial court's finding that he failed to pay child support in the amounts ordered by the court. He contends, however, that the trial court should have made the reduction in his child support retroactive to the date that his older child reached majority, July 2, 2005. This is purely a question of law because it involves the scope of the court's power to shape its orders in response to the circumstances of this case. Questions of law are reviewed on appeal *de novo* with no presumption of correctness afforded to the trial court's conclusions. *Union Carbide v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

Child support in Tennessee is governed by statute, *Lichtenwalter v. Lichtenwalter*, 229 S.W.3d 690, 692 (Tenn. 2007), and the courts' authority to order or enforce child support is statutory. *Penland v. Penland*, 521 S.W.2d 222, 224 (Tenn. 1975). A parent is statutorily required to support his or her child until the child reaches majority or graduates from high school.[9] Tenn. Code Ann. § 34-1-102(a) and (b); *Lichtenwalter*, 229 S.W.3d at 692; *Kirkpatrick v. O'Neal*, 197 S.W.3d 674, 679 (Tenn. 2006). At common law, a parent's duty to support also continued until majority. *Corder v. Corder*, 231 S.W.3d 346, 355 (Tenn. Ct. App. 2006).

As general rule, however, parents have no legal obligation to support their adult children. *Garey v. Garey*, 482 S.W.2d 133, 135 (Tenn. 1972); *Corder,* 231 S.W.3d at 356; *Hawkins v. Hawkins*, 797 S.W.2d 897, 898 (Tenn. Ct. App. 1990). Accordingly, subject to some limited exceptions which do not apply to the case before us, the courts' authority to require a parent to pay child support ends when the child reaches his or her eighteenth birthday and/or graduates from high

[9]If the child is still in high school when he or she reaches age eighteen, the duty of support continues until the child graduates from high school or the class of which the child is a member when he or she turns eighteen graduates, whichever occurs first. Tenn. Code Ann. § 34-1-102(b).

school.[10] *Blackburn v. Blackburn*, 526 S.W.2d 463, 466 (Tenn. 1975); *Penland v. Penland*, 521 S.W.2d at 224; *Corder*, 231 S.W.3d at 356.

Consequently, after his older child turned eighteen, Father no longer had a legally enforceable duty to pay child support for that child, and the court was without authority to order payment beyond majority. Ordinarily, Father's child support payments should have been reduced prospectively from the date of his child's eighteenth birthday. The trial court ultimately recognized Father's entitlement to such a reduction, but decided to postpone its effective date, declaring that "it is within this Court's discretion whether to go back to the date of the original filing to reduce or not. The Court finds that such would not be appropriate in this case in view of the fact that the failure to proceed with this petition to modify child support is entirely due to the failure of Mr. Brooks and his previous counsel, not his present counsel." The trial court ordered the reduction effective as of October of 2006, because that was when Father restored the child's health insurance and also went into rehab.

The trial court's ruling was likely the result of the application of Tenn. Code Ann. § 36-5-101(f)(1) and cases such as *Huntley v. Huntley*, 61 S.W.3d 329 (Tenn. Ct. App. 2001). The statute provides in relevant part that no child support order may be modified retroactively "as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties." Tenn. Code Ann. § 36-5-101(f)(1). The court in *Huntley* held that the trial court has the discretion "to order the modification effective as of the date of the modification petition, the date of the final hearing, or any appropriate date in between." *Huntley*, 61 S.W.3d at 339 (*citing Bjork v. Bjork*, No. 01A01-9702-CV-00087, 1997 WL 653917 at *8 (Tenn. Ct. App. Oct. 22. 1997) (no Tenn. R. App. P. 11 application filed)); *see also Ingle v. Ingle*, No. E2001-02802-COA-R3-CV, 2002 WL 1798545 (Tenn. Ct. App. Aug. 6, 2002) (no Tenn. R. App. P. 11 application filed).

These principles do not apply, however, to reduction of child support due to a child's reaching the age of majority and the concomitant expiration of the parental duty to support. First, except in statutorily defined situations not present here, a court has no authority to order child support beyond majority, or beyond the time established by statute. Consequently, an order of support for a particular child expires at the time the child reaches majority.

Second, our courts have also taken the position that a reduction in child support due to the emancipation of a child should not be considered a modification as that term is used in Tenn. Code Ann. 35-5-101(f)(1), but instead is simply the application of a rule of law derived from the legal principle that parents generally owe no duty of support to their adult children. *Clinard v. Clinard*, No. 01-S-01-9502-CV00021, 1995 WL 563858, at *2 (Tenn. Sept. 25, 1995) *pet. reh'g denied* (Nov. 6, 1995); *Lichtenwalter v. Lichtenwalter*, No. M2003-03115-COA-R3-CV, 2006 WL 236945 (Tenn. Ct. App. Jan. 30, 2006)(*rev. on other grounds,* July 12, 2007); *Bell v. Bell*, No. 1A01-9511-CH-00493, 1996 WL 548150 (Tenn. Ct. App. Sept. 25, 1996). The Tennessee Supreme Court has

[10]However, the fact that a child has reached the age of majority does not relieve a parent from liability for unpaid child support that accrued during the child's minority. *Lichtenwalter*, 229 S.W.3d at 693; *Kuykendall v. Wheeler*, 890 S.W.2d 785, 786 (Tenn. 1994).

specifically stated that proration of child support for an emancipated child "is not a retroactive modification of the child support award and its application does not require a petition to, or an order from, the court." *Clinard*, 1995 WL 563858, at *2.

The common law rule was that child support awards are generally prorated, or proportionally reduced, as each child reaches the age of majority. *Churchill v. Churchill*, 313 S.W.2d 436, 438 (Tenn. 1958); *Weinstein v. Heimberg*, 490 S.W.2d 692, 698 (Tenn. Ct. App. 1972). For example, in *Hawkins*, *supra*, we reversed a judgment holding a father liable for a child support arrearage, because the alleged arrearage had accrued after the child attained eighteen years of age. 797 S.W.2d at 898. We held that the father had no legal duty to support his adult child. *Id*.

Mother acknowledges that proration of a child support obligation without a court order has been found to be an appropriate response to the emancipation of a child. She contends, however, that unilateral reduction by the obligor parent is acceptable only in cases where only one child has been receiving support, or in cases involving more than one child if the court's original order specified exactly how much of the obligation has been allocated for each child. *See, e.g., Shupe v. Shupe*, No. 118, 1991 WL 16249 (Tenn. Ct. App. Feb. 12, 1991) (father unilaterally reduced his child support payment from $400 to $200 after the emancipation of his oldest child and this court affirmed his right to do so, based upon the original order stating that the father was to pay $200 per child).

It is true that a trial court "is not *obligated* to apply proration where circumstances justify the original total amount of support for the remaining minor children" *(emphasis in original)*, *Bell v. Bell*, 1996 WL 548150 at *2, and it is also true that a formulaic proration may not be appropriate in many situations. Further, the adoption of the child support guidelines for setting the amount of child support has rendered "proration" obsolete. *Lichtenwalter*, 2006 WL 236945, at *7 n. 19. However, the premise for, and the risks of, unilaterally reducing one's child support payment on the basis of one child reaching majority remain the same. While an obligor parent may unilaterally reduce child support when a child reaches majority, where the support order covers more than one child it is more prudent to seek a modification of the child support obligation in the trial court. *Corder v. Corder*, 231 S.W.3d at 359.

Unilateral reduction of child support in such situations is risky in part because of the difficulty of calculating the correct amount of child support under the current guidelines for the remaining minor child or children and of predicting with certainty whether or not the trial court would be inclined to deviate upward from the guidelines or whether increased income would result in a higher support payment. Thus, if the trial court were to reach a different conclusion from that of the obligor parent as to the amount of such reduction, the obligor could ultimately be subject to a judgment for arrearages and other consequences.

In any event, none of the problems or risks associated with unilateral reduction based upon emancipation of one child where other children remain under the support order appears to be at issue in the case before us. Here, the trial court calculated Father's child support at $920 per month under the child support guidelines after the emancipation of his oldest child, and it ordered him to pay that

amount prospectively. The court did not order a deviation from the presumptive amount.

In this appeal, Mother does not challenge the correctness of the trial court's calculation of the monthly support for their younger child.[11] We therefore affirm the amount, and the question is when the reduced amount should have been effective. As discussed above, ordinarily such a reduction should be applied retroactively to the date of the child's reaching majority, herein July 2, 2005. However, there was a judgment entered October 6, 2005, which presumably included in the accumulated arrearage the original support amount through September of 2005. That order was not appealed and has, therefore, become final. It is not part of this appeal. Consequently, Father cannot claim the reduced amount for any months before entry of that order. Except for this prior final judgment, we find no authority for the trial court to postpone the effective date for the reduction in Father's obligation. We therefore hold that Father's reduced child support obligation should have been retroactively applied to October 7, 2005.

Father asserts that had the trial court applied the $920 per month child support obligation retroactively to the correct date, it would have found that he overpaid on the total amount of his obligation. The trial court did not make a finding of fact as to the amount Father actually paid. We accordingly remand this case to the trial court for a determination of the amount of support paid by Father during the relevant time period as well as the amount he should have paid under the reduced obligation. If he overpaid, the arrearage for post-emancipation child support must be vacated. If there was overpayment beyond that, it should be applied to Father's arrearage judgment from October of 2005, the remainder of which he is still obligated to pay in full.

IV. CRIMINAL CONTEMPT

A. THE STANDARD OF REVIEW

Trial courts are authorized to enforce compliance with a valid order of support through the exercise of their contempt powers. Tenn. Code Ann. § 36-5-104. The courts have long been recognized to possess the inherent and necessary power to punish for contempt. *Ahern v. Ahern*, 15 S.W.3d 73, 82 (Tenn. 2000); *Black v. Blount*, 938 S.W.2d 394, 397 (Tenn. 1996). By statute, our courts may impose contempt sanctions for "[t]he willful disobedience or resistance . . . to any lawful writ, process, order, rule, decree, or command." Tenn. Code Ann. § 29-9-102(3).[12]

Because of the punitive purpose of proceedings for criminal, as distinguished from civil,

---

[11]Father claims that the trial court erred by failing to reduce the amount of his income used in the child support calculation by giving him credit for self-employment taxes due on that income.

[12]A separate statute, Tenn. Code Ann. § 36-5-104, allows the arrest of any person who fails to comply with an order to provide support for a minor child, except that, "[n]o arrest warrant shall issue for the violation of any court order of support if such violation occurred during a period of time in which the obligor was incarcerated in any penal institution and was otherwise unable to comply with the order." Tenn. Code Ann. § 36-5-104(b).

contempt, *see Black v. Blount*, 938 S.W.2d at 398, such proceedings are considered quasi-criminal and require the courts to accord defendants many of the constitutional rights that are ordinarily afforded to criminal defendants. *Strunk v. Lewis Coal Corp.*, 547 S.W.2d 252, 254 (Tenn. Crim. App. 1976) *(*citing *Shiflet v. State*, 400 S.W.2d 542, 544 (Tenn. 1966)). Under Rule 42(b) of the Tennessee Rules of Criminal Procedure, a party accused of an act of criminal contempt (other than an act committed in the presence of the court) is entitled to proper notice and a hearing on the charges against him.

As Tenn. Code Ann. § 29-9-102(3) indicates, in order to find contempt the court must find the disobedience to the court's order to be willful. *Ahern*, 15 S.W.3d at 79. In the context of a child support case, criminal contempt may not be imposed upon an obligor if he or she was unable to pay the court-ordered support. Guilt in criminal contempt cases, including the willful nature of the act, must be proved beyond a reasonable doubt. *Black v. Blount*, 938 S.W.2d at 398; *Shiflet v. State*, 400 S.W.2d at 544; *Bailey v. Crumb*, 183 S.W.3d 383, 389-90 (Tenn. Ct. App. 2005); *Strunk v. Lewis Coal Co.*, 547 S.W.2d at 253.

On appeal, individuals convicted of criminal contempt lose their presumption of innocence and must overcome the presumption of guilt. Therefore, "[a]ppellate courts do not review the evidence in a light favorable to the accused and will reverse criminal contempt convictions only when the evidence is insufficient to support the trier-of-fact's finding of contempt beyond a reasonable doubt." *Moody v. Hutchison,* 159 S.W.3d 15, 25 (Tenn. Ct. App. 2004). *See also* Tenn. R. App. P. 13(e); *Thigpen v. Thigpen*, 874 S.W.2d 51, 53 (Tenn. Ct. App. 1993). Appellate courts review a trial court's decision of whether to impose contempt sanctions using the more relaxed abuse of discretion standard of review. *Hawk v. Hawk*, 855 S.W.2d 573, 583 (Tenn. 1993); *Freeman v. Freeman*, 147 S.W.3d 234, 242 (Tenn. Ct. App. 2003).

B. FINDINGS OF CONTEMPT

Under the March 7, 2007 order, which is the order under appeal, the trial court found Father guilty of seven (7) counts of willful criminal contempt for his failure to pay the full amount of child support ordered in each of the seven months from February through August of 2006, and sentenced him to seventy (70) days in jail on those counts. The trial court also found Father guilty of thirteen (13) counts of criminal contempt for failure to account for his income to Mother on a monthly basis. In addition, the trial court found Father in criminal contempt for failing to reinstate medical insurance coverage for his children for the months of January through September, 2006, and sentenced him to 100 days for this continuing failure. Finally, the court found Father in contempt for failing to "immediately" reimburse Mother $200 as previously ordered and sentenced him to ten (10) days incarceration.

According to our calculation, the trial court found Father in contempt on thirty (30) counts and sentenced him to one hundred eighty (180) days in jail, stating:

> The court finds that the total number of days for contempt exceeds the authority of this Court which is limited to 180 days. It is, therefore, ORDERED, ADJUDGED

> AND DECREED that Douglas J. Brooks is sentenced to 180 days in the Robertson County Jail. The Court has limited the same to 180 days although there are more than 18 separate counts of criminal contempt that were alleged and proven and found by this Court. However, the Court sentences him to 180 days in the Robertson County Jail, ten days for each violation as stated above for a total of 180 days.

Father challenges the findings of contempt on various grounds. He argues that the notice he received was deficient as to the failure to account for his income and failure to reinstate medical insurance, because the petition for contempt did not allege that such failures occurred in every month for which the court found a willful contempt. We have reviewed the petition and the entire record, and we find the notice was sufficient.[13] Father also argues a failure of proof on the willfulness element of the failure to account to Mother on his income every month. Our review of the record leads us to conclude that the evidence on that element is sufficient to support the trial court's finding of contempt beyond a reasonable doubt.

In its order of December 29, 2005, the trial court had ordered Father to immediately pay the balance on a dental bill owed to Dr. Chris Given. Mother testified that Father paid the balance of $200 to her about thirty days later. The court found him guilty of one count of contempt for the delay. There was no inquiry into whether Father had the funds to pay the bill "immediately", or as to any possible reasons for the delay. Consequently, we vacate that finding of contempt.

At this point, we have concluded that the trial court's findings of contempt on twenty-two (22) separate counts are supported by the record (thirteen counts for failure to account for his income monthly and nine counts for failing to reinstate his child's medical insurance for the nine months following the court's order to do so).[14] The trial court was authorized to order that Father spend up to ten days in jail for each finding of contempt. Therefore, the 180 day sentence is justified by the 22 counts we have affirmed.[15]

---

[13]Without explanation, Mother concedes in her brief that Father could be held in contempt for willful refusal to reinstate medical insurance for his child on only one count. We disagree. The petition for contempt, filed September 7, 2006, states in relevant part,

> Your petitioner would state and show unto this Honorable Court in willful criminal and/or civil contempt of this Court's Order, Mr. Brooks has failed to reinstate the parties' minor child, Kala on medical insurance which he was required to do immediately and to her knowledge, he still has not done so.

[14]Although the trial court found Father in contempt for the months of January through September of 2006 for his failure to provide insurance for his child, for a total of nine months, the court sentenced Father to a total of 100 days for this failure. Nonetheless, the order lists the specific months, and we interpret the order as finding Father in contempt on nine counts.

[15]We note that the trial court ordered its sentence for these contempts to run concurrently with the sentence for contempt arising from its order of October 6, 2005. Father argues that he should not be required to serve the remainder of that first 180 day sentence, since the court's "furlough" should be considered a suspension of his sentence. Generally,

C. SANCTIONS FOR DISOBEYING AN INVALID ORDER

Father has also challenged the contempt findings regarding failure to pay the amount of child support previously ordered. While our resolution of the issues raised in that argument will not necessarily affect the length of his sentence, he is entitled to challenge the findings themselves.

In its order of March 7, 2007, the trial court found Father guilty of seven counts of criminal contempt for paying less than the previously-ordered $2,500 per month for seven months after the emancipation of his older son. Father argues that since he paid more than was actually required for the remaining minor child during those months, those contempt convictions must be vacated.

It is true that the Tennessee Supreme Court has stated, "The authority of the court to order child support and, if necessary, to enforce same by the process of contempt, is statutory, and generally exists only during minority." *Penland*, 521 S.W.2d at 224. *See also Corder*, 231 S.W.3d at 356; *Hawkins*, 797 S.W.2d at 897. However, there is also a longstanding rule that, absent specific circumstances, court orders must be obeyed until they are set aside, even when those orders are later determined to be erroneous. *Frye v. Frye,* 80 S.W.3d 15, 19 (Tenn. Ct. App. 2002). Where the trial court has jurisdiction over the subject matter and the parties and has the authority to render a particular order or decree, the fact that such order is later determined to be erroneous or irregular or improvidently rendered does not justify a person in failing to abide by its terms.[16] *See, Generally*, 17 AMJUR.2d, *Contempt,* § 148.

One exception to the general rule that a party is obligated to obey a court's order is when the order of the court is not merely erroneous, but is void. Our opinion in the case of *Aladdin Industries, Inc. v. Associated Transport, Inc.*, 323 S.W.3d 222 (Tenn. Ct. App. 1958) contains an extensive discussion of the circumstances under which a court's order might be considered void. Such circumstances include those where the court rendering the judgment had no jurisdiction whatsoever over the kind or class of action involved. "If a court should go so clearly and so far outside its jurisdiction as to act, not as a court, but as a usurper, its order would be void, would bind no one, and could be disregarded by any one with impunity." *Aladdin Industries, Inc. v. Associated Transport, Inc*, 323 S.W.2d at 229.

---

when a sentence is suspended, it is treated like a grant of probation, which expires when the term of the sentence is completed. *See, generally, State v. Ruiz*, 204 S.W.3d 772 (Tenn. 2006); *State v. Beard*, 189 S.W.3d 730 (Tenn. Crim. App. 2005); *Kelly v. State*, 61 S.W.3d 341 (Tenn. Crim. App. 2000). We do not believe we need rule on that issue at this time, since it would have no practical effect on Father's obligation to serve the sentence arising from the court's order of February 13, 2007.

[16]The same cannot be said of a conviction for civil contempt, because such an order is remedial in nature, and the right to the remedy evaporates with the reversal of the order. *Ibid; United States v. United Mine Workers,* 330 U.S. 258, 294-95 (1947); *Blaylock v. Cheker Oil Co.*, 547 F.2d 962, 966 (6th Cir.1976).

In the present case, it is undisputed that the trial court had obtained personal jurisdiction over the parties. Further, our circuit courts have concurrent subject matter jurisdiction with the chancery court over all matters incident to divorce, including the provision of child support for the parties' minor children. *See* Tenn. Code Ann. § 16-10-108. As our Supreme Court has stated, "[i]n order to determine if a court has subject matter jurisdiction, we consider whether or not it had the power to enter upon the inquiry; not whether its conclusion in the course of it was right or wrong." *State v. Cawood*, 134 S.W.3d 159, 163 (Tenn. 2004)(citing *Aladdin Industries, Inc. v. Associated Transport, Inc*, 323 S.W.2d at 229).

The trial court's decision as to the appropriate date for a reduction in Father's child support obligation was based upon a mistaken interpretation of statutory and decisional law, as explained above. While the trial court's decision may have been erroneous, it was not void for want of jurisdiction.

The power of the courts to impose punishment for criminal contempts is "intended to preserve the power and vindicate the dignity and authority of the law and the court as an organ of society." *Black v. Blount*, 938 S.W.2d at 398. Thus, when an individual is convicted of criminal contempt for disobeying a court's order and the order is later reversed, the conviction may survive that reversal, because "the punishment is to vindicate the court's authority which has been equally flouted whether or not the command was right." *Garrison v. Cassens Transport Co.*, 334 F.3d 528, 543 (6th Circuit 2003). Accordingly, under the generally applicable rule, Father's convictions of criminal contempt for willful failure to pay the amount previously ordered by the court would not be subject to automatic reversal or vacation.

In the present case, Father was under a previously-existing order to pay $2,500 per month for child support. However, in its order of December 29, 2005, the court recognized that the emancipation of Father's older child would entitle him to a recalculation of, with a likely reduction in, his child support obligation, and it declared that "it will allow any modification of Mr. Brooks' child support obligation to begin on the date that the Court entered its Order from the September 28, 2005 [hearing], which was entered on October 6, 2005." This order was consistent with our holdings set out above. Additionally, and more significantly for the issue of the contempt findings based on Father's failure to pay the $2,500 previously ordered, that order prevents, in our opinion, a finding beyond a reasonable doubt that Father willfully failed to pay the previously ordered amount. Accordingly, we vacate the contempt findings for seven counts of failure to pay the full amount of support from February through August of 2006.[17]

The seventy days of incarceration that constituted the sanction for these failures are also vacated. We have affirmed the trial court's findings of contempt on twenty-two (22) separate counts. Those findings would support a sanction of a total of 180 days, which is the sanction assigned by the

[17]As we noted above, the court ignored its own declaration in its Final Order of March 7, 2007 when it made the reduction in Father's child support obligation retroactive to October of 2006 instead of October of 2005. The order that Father disobeyed was thus not merely one that was later adjudged to be erroneous but one that contradicted the court's own declared intentions.

court. Consequently, we affirm the sanction of 180 days incarceration, finding no abuse of discretion in the imposition of these sanctions.

V.

We affirm the trial court's determination as to the amount of Mr. Brooks's current monthly child support obligation, but we reverse its order as to the initial date such reduced obligation became effective, holding that it should have begun October 7, 2005. We vacate the finding of one count of contempt against Father for failing to reimburse Mother as ordered, and seven counts of contempt for failing to pay child support in the correct amount. We affirm the other twenty-two counts of contempt. We remand this case to the Circuit Court of Robertson County for a recalculation of Mr. Brooks' child support arrearage and for any other proceedings necessary. Divide the costs on appeal equally between the parties.

_____

PATRICIA J. COTTRELL, P.J., M.S.